IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3455 of 2001

Date of Decision: 16.10.2007

Darshan Singh ....Appellant

Vs.

Jagraj Singh & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Ashok Aggarwal, Advocate,
for the appellant.

Mr.A.S.Jattana, Advocate,
for respondent No.1.

Vinod K.Sharma,J. Oral)

This regular second appeal has been filed against the judgments and decrees passed by the learned courts below dismissing the suit filed by the plaintiff-appellant seeking declaration to the effect that the plaintiff-appellant was owner to the extent of 1/8th share in the suit land measuring 51 Bighas 5 Biswas comprised in Khewat No.23 Khatauni Nos. 83 to 87 situated in village Mithewal, Tehsil Malerkotla . Relief of joint possession

to the extent of 1/8th share in the land fully described in the head note (A) of the plaint was also claimed. It was also prayed that mandate for permanent prohibitory injunction be issued against defendants No.1 to 5 from alienating by way of sale, mortgage or in any other manner the suit land fully described in head-note (A) to any person.

In the suit the plaintiff had claimed 1/8th share in the property claiming it to be co-parcenary in the hands of Niranjan Singh being Karta thereof. However, this plea of the plaintiff that the property was coparcenary in the hands of Niranjan Singh has been rejected by both the courts below. The finding of fact is not open to challenge as no evidence was produced by the plaintiff to prove coparcenary nature of the property. However, the plaintiff-appellant maintained that after the death of Niranjan Singh he was entitled to inherit the suit land being son of Niranjan Singh.

The suit was contested by the defendant-respondents on the plea that by way of collusive decree dated 24.1.1990 the suit land stood transferred in favour of the defendants. It was also the plea of the defendants that Niranjan Singh during his life time had executed a registered Will dated 12.2.1981 bequeathing his property in favour of the defendant-respondents.

Learned courts below held that the Will dated 12.2.1981 stood proved. Learned courts below also came to the conclusion on appreciation of evidence that collusive decree was not fraudulently obtained and is, therefore, not open to challenge. However, learned lower appellate court

rejected the collusive decree for want of registration, but dismissed the suit of the plaintiff by holding that under Will dated 12.2.1981 land stood bequeathed to defendant-respondents and therefore, plaintiff has no right to claim 1/8th share in the property on the basis of inheritance. Though finding of the learned lower appellate court that the collusive decree was required to be registered is also prima facie not correct, however, there is no necessity to go into the details as the learned lower appellate court has rightly held that the plaintiff would not succeed even if the collusive decree is set aside as the property was to be inherited under the Will dated 12.2.1981.

Mr.Ashok Aggarwal, learned counsel appearing on behalf of the appellant has vehemently contended that learned lower appellate court was in error in upholding the Will after setting aside the collusive decree dated 24.1.1990.

Learned counsel for the appellant submits that following substantial question of law arises for consideration in this appeal:

> "Whether in view of the sufferance of collusive decree on 24.1.1990, Will dated 12.2.1981 stood revoked?

Learned counsel for the appellant contends that once the bequeathed property was transferred by way of collusive decree it would be deemed to revocation of the Will. This contention is based on the fact that the object of the Will is to bequeath the property and once the property is transferred there remains no relevance of the Will executed in favour of a

party.

This contention of the learned counsel for the appellant cannot be accepted. The Will can be revoked by the Executor by revocation deed or by executing another Will by revoking the previous Will. The Will cannot be said to have been automatically revoked because of the subsequent act. Rather the intention of the Executor in the present case by executing the collusive decree was to transfer the property in favour of the defendant-respondents so that the Will executed by him may not be subject to any challenge. If after the execution of the Will the property is transferred and said transfer is upheld it would only mean that beneficiary under the Will would not be entitled to any property under the Will, as the inheritance under the Will is to the property left by the deceased on the date of his death, as succession, opens immediately on the death of a person. Any subsequent act therefore, cannot lead to a conclusion that the Will stood automatically revoked as is sought to be contended. Therefore, the question of law sought to be raised by the learned counsel for the appellant has to be answered against him.

There is no scope of interference in regular second appeal in concurrent findings of fact.

Dismissed.

(Vinod K.Sharma)
Judge

16.10.2007
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